

HON. JUDGE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

GROUP14 TECHNOLOGIES, INC,

Plaintiff,

v.

NEXEON LIMITED,

Defendant.

CASE NO. 2:22-cv-01354-TSZ

**STIPULATED  
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. DEFINITIONS

2.1 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.2 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

2.3 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.4 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its Outside Counsel of Record to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party, and (3) at the time of retention, is not anticipated to become an employee of a Party.

2.5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “CONFIDENTIAL” information or items, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm.

2.6 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.7 Outside Counsel of Record: attorneys who are not employees of a Party to this action but are retained to represent or advise a Party to this action and have appeared in this action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

2.8 Party: any Party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1       2.9    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
2 Material in this action.

3       2.10   Professional Vendors: persons or entities that provide litigation support services  
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
5 organizing, storing, or retrieving data in any form or medium) and their employees and  
6 subcontractors.

7       2.11   Protected Material: any Disclosure or Discovery Material that is designated as  
8 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9       2.12   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
10 Producing Party.

11   3.    SCOPE

12       The protections conferred by this agreement covers not only Protected Material (as defined  
13 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
14 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,  
15 or presentations by parties or their Outside Counsel of Record that might reveal Protected Material.

16       However, the protections conferred by this Stipulation and Order do not cover the  
17 following information: (a) any information that is in the public domain at the time of disclosure to  
18 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
19 a result of publication not involving a violation of this Stipulation and Order, including becoming  
20 part of the public record through trial or otherwise; and (b) any information known to the Receiving  
21 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source  
22 who obtained the information lawfully and under no obligation of confidentiality to the  
23 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
24 agreement or order.

25   4.    ACCESS TO AND USE OF CONFIDENTIAL MATERIAL  
26

1           4.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
2 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
3 defending, or attempting to settle this litigation. Protected Material may be disclosed only to the  
4 categories of persons and under the conditions described in this Stipulation and Order. Protected  
5 Material must be stored and maintained by a Receiving Party at a location and in a secure manner  
6 that ensures that access is limited to the persons authorized under this Stipulation and Order.

7           4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
8 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
9 information or item designed “Confidential” only to:

10                   (a)     the Receiving Party’s Outside Counsel of Record in this action, as well as  
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
12 information for this litigation;

13                   (b)     the officers, directors, and employees of the Receiving Party to whom  
14 disclosure is reasonably necessary for this litigation;

15                   (c)     Experts (as defined in this Stipulation and Order) of the Receiving Party to  
16 whom disclosure is reasonably necessary for this litigation and who have signed the  
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18                   (d)     the court, court personnel, and court reporters and their staff;

19                   (e)     Professional jury or trial consultants and Professional Vendors retained by  
20 Outside Counsel of Record to whom disclosure is reasonably necessary for this litigation and who  
21 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22                   (f)     during their depositions, witnesses in the action to whom disclosure is  
23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
24 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
25 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
26

1 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
2 under this Stipulation and Order;

3 (g) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
6 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
7 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
10 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
11 for this litigation;

12 (b) Experts (as defined in this Stipulation and Order) of the Receiving Party (1) to whom  
13 disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment  
14 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph  
15 4.4(a), below, have been followed;

16 (c) the court, court personnel, and court reporters and their staff;

17 (d) Professional jury or trial consultants and Professional Vendors retained by Outside  
18 Counsel of Record to whom disclosure is reasonably necessary for this litigation and who have  
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (e) during their depositions, witnesses in the action to whom disclosure is reasonably  
21 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
22 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
23 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
24 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
25 Stipulation and Order; and  
26

1 (f) the author or recipient of a document containing the information or a custodian or other  
2 person who otherwise possessed or knew the information.

3 4.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

5 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,  
6 a Party that seeks to disclose to an Expert (as defined in this Stipulation Order) any information or  
7 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first  
8 must make a written request to the Designating Party that (1) identifies the general categories of  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving  
10 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the  
11 city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume,  
12 (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the  
13 Expert has received compensation or funding for work in his or her areas of expertise or to whom  
14 the expert has provided professional services, including in connection with a litigation, at any time  
15 during the preceding five years, and (6) identifies (by name and number of the case, filing date,  
16 and location of court) any litigation in connection with which the Expert has offered expert  
17 testimony, including through a declaration, report, or testimony at a deposition or trial, during the  
18 preceding five years.

19 (b) A Party that makes a request and provides the information specified in the preceding  
20 paragraph may disclose the subject Protected Material to the identified Expert unless, within 14  
21 days of delivering the request, the Party receives a written objection from the Designating Party.  
22 Any such objection must set forth in detail the grounds on which it is based.

23 (c) A Party that receives a timely written objection must meet and confer with the  
24 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
25 within seven days of the written objection. If no agreement is reached, the Party seeking to make  
26 the disclosure to the Expert may file a motion as provided in under Local Civil Rule 7 (and in

1 compliance with Local Civil Rule 5(g), if applicable) seeking permission from the court to do so.  
2 Any such motion must describe the circumstances with specificity, set forth in detail the reasons  
3 why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure  
4 would entail, and suggest any additional means that could be used to reduce that risk. In addition,  
5 any such motion must be accompanied by a competent declaration describing the parties' efforts  
6 to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
7 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to  
8 approve the disclosure.

9 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
10 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
11 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

12 4.5 Filing Confidential Material. Before filing Protected Material or discussing or  
13 referencing such Protected Material in court filings, the filing party shall confer with the  
14 Designating Party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the  
15 Designating Party will remove the confidentiality designation, whether the document can be  
16 redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the  
17 meet and confer process, the Designating Party must identify the basis for sealing the specific  
18 Protected Material at issue, and the filing party shall include this basis in its motion to seal, along  
19 with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the  
20 procedures that must be followed and the standards that will be applied when a party seeks  
21 permission from the court to file Protected Material under seal. A party who seeks to maintain the  
22 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),  
23 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in  
24 the motion to seal being denied, in accordance with the strong presumption of public access to the  
25 Court's files.

1     5.     DESIGNATING PROTECTED MATERIAL

2             5.1     Exercise of Restraint and Care in Designating Material for Protection. Each Party  
3 or Non-Party that designates information or items for protection under this Stipulation and Order  
4 must take care to limit any such designation to specific material that qualifies under the appropriate  
5 standards. To the extent it is practical to do so, the Designating Party must designate for protection  
6 only those parts of material, documents, items, or oral or written communications that qualify, so  
7 that other portions of the material, documents, items, or communications for which protection is  
8 not warranted are not swept unjustifiably within the ambit of this Stipulation and Order.

9             Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
12 and burdens on other parties) expose the Designating Party to sanctions.

13             If it comes to a Designating Party's attention that information or items that it designated  
14 for protection do not qualify for protection at all or do not qualify for the level of protection initially  
15 asserted, the designating party must promptly notify all other parties that it is withdrawing the  
16 mistaken designation.

17             5.2     Manner and Timing of Designations. Except as otherwise provided in this  
18 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or  
19 ordered, Disclosure or Discovery Material that qualifies for protection under this agreement must  
20 be clearly so designated before or when the material is disclosed or produced. Designating in  
21 conformity with this Stipulation and Order requires:

22             (a)     Information in documentary form: (*e.g.*, paper or electronic documents and  
23 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
24 the Designating Party must affix the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
25 ATTORNEYS' EYES ONLY" to each page that contains Protected Material. If only a portion or  
26 portions of the material on a page qualifies for protection, the producing party also must clearly



1 identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins) and must  
 2 specify, for each portion, the level of protection being asserted.

3 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
 4 and any participating non-parties must identify on the record, before the close of the deposition or  
 5 other pretrial proceeding, all protected testimony and specify the level of protection being asserted,  
 6 without prejudice to their right to so designate other testimony after reviewing the transcript. Any  
 7 Party or Non-Party may, within fifteen days after receiving the transcript of the deposition or other  
 8 pretrial proceeding, designate portions of the transcript, or exhibits thereto. If a party or non-party  
 9 desires to protect Protected Material at trial, the issue should be addressed during the pre-trial  
 10 conference.

11 (c) Other tangible items: the Producing Party must affix in a prominent place  
 12 on the exterior of the container or containers in which the information or item is stored the word  
 13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a  
 14 portion or portions of the information or item warrant protection, the producing party, to the extent  
 15 practicable, shall identify the protected portion(s) and specify the level of protection being  
 16 asserted.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 18 designate qualified information or items does not, standing alone, waive the Designating Party’s  
 19 right to secure protection under this Stipulation and Order for such material. Upon timely  
 20 correction of a designation, the Receiving Party must make reasonable efforts to ensure that the  
 21 material is treated in accordance with the provisions of this Stipulation and Order.

## 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
 24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
 25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 26 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
2 original designation is disclosed.

3       6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
4 regarding confidential designations without court involvement. Any motion regarding  
5 confidentiality designations or for a protective order must include a certification, in the motion or  
6 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
7 conference with other affected parties in an effort to resolve the dispute without court action. The  
8 certification must list the date, manner, and participants to the conference. A good faith effort to  
9 confer requires a face-to-face meeting, remote video conference, or a telephone conference.

10       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
11 intervention, the Designating Party may file and serve a motion to retain confidentiality under  
12 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
13 persuasion in any such motion shall be on the Designating Party. Frivolous challenges, and those  
14 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
15 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
16 the material in question as confidential until the court rules on the challenge.

17     7.       PROSECUTION BAR

18       Absent written consent from the Producing Party, any individual who receives access to  
19 another Party's or Non-Party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
20 information shall not be involved in the prosecution of patents or patent applications relating to  
21 the subject matter of this action. For purposes of this paragraph, "prosecution" includes directly or  
22 indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent  
23 claims. To avoid any doubt, "prosecution" as used in this paragraph does not include representing  
24 or assisting a party challenging or defending a patent before a domestic or foreign agency  
25 (including, but not limited to, a reissue, *ex parte* reexamination, *inter partes* review, covered  
26 business method patent review, or post grant review) even if claims are drafted or amended

provided that the individual does not draft the claims or the amendment or provide input on the drafting of the claims or the amendment. This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is first received by the affected individual and shall end two (2) years after final termination of this action.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

(a) promptly notify the Designating Party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulation and Order. Such notification shall include a copy of this Stipulation and Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulation and Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Stipulation and Order, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to a Receiving Party that certain produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Party are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each Receiving party must return all Protected Material to the Producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, Outside Counsel of Record are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material.

The confidentiality obligations imposed by this Stipulation and Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 31, 2023

COOLEY LLP

CORR CRONIN LLP

s/ Jeffrey Lombard  
Jeffrey Lombard, WSBA No. 50260  
1700 Seventh Avenue  
Suite 1900  
Seattle, WA 98101-1355  
(206) 452-8796 Phone  
(206) 452-8800 Fax  
jlombard@cooley.com

Adam S. Gershenson (Mass. Bar No. 671296)  
(Pro hac vice )  
500 Boylston Street

s/ Steven W. Fogg  
Steven W. Fogg, WSBA No. 23528  
Todd T. Williams, WSBA No. 45032  
Eric A. Lindberg, WSBA No. 43596  
1015 Second Avenue, Floor 10  
Seattle, Washington 98104-1001  
(206) 625-8600 Phone  
(206) 625-0900 Fax  
sfogg@corrchronin.com  
twilliams@corrchronin.com  
elindberg@corrchronin.com

14th Floor  
Boston, MA 02116-3736  
(617) 937 2379 Phone  
(617) 937 2400 Fax  
agershenson@cooley.com

Adam Pivovar (D.C. Bar No. 1015247)  
(Pro hac vice)  
COOLEY LLP  
1299 Pennsylvania Ave. NW  
Suite 700  
Washington, D.C. 20004-2400  
Telephone: (202) 842-7889  
Fax: (202) 842-7899  
Email: apivovar@cooley.com

*Attorneys for Plaintiff  
Group14 Technologies, Inc.*

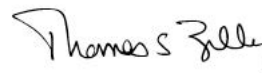
Mark P Walters, WSBA No. 30819  
Mitchell D. West, WSBA No. 53103  
LOWE GRAHAM JONES PLLC  
1325 Fourth Avenue, Suite 1130  
Seattle, WA 98101  
(206) 381-3300 Phone  
(206) 381-3301 Fax  
walters@lowegrahamjones.com  
west@lowegrahamjones.com

*Attorneys for Defendant Nexxon Limited*

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: February 1, 2023



Hon. Thomas S. Zilly  
United States District Court Judge

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on  
\_\_\_\_\_ in the case of *Group14 Technologies, Inc. v. Nexxon Limited*, Case No.  
2:22-cv-01354-TSZ. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
any manner any information or item that is subject to this Stipulated Protective Order to any person  
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_